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end user may obtain access to the Internet from an Internet service provider, by using dial-up or dedicated access to connect to the Internet service provider's processor. The Internet service provider, in turn, connects the end user to an Internet backbone provider that carries traffic to and from other Internet host sites.

BellSouth claims that the significance of this is that calls to ISPs only transit through the ISP's local point of presence. Thus, the call does not terminate there. In support of this conclusion, BellSouth mentions several other services, such as Asynchronous Transfer Mode (ATM) technology, that use packet switching. BellSouth makes the point that the jurisdictional nature of a call is not changed through the conversion from circuit switching to packet switching.

BellSouth also discussed an example where an end user made a long-distance call to access voice mail. In that case the call was an interstate call, and the FCC found that it did not lose that interstate character upon being forwarded to voice mail. Petition for Emergency Relief and Declaratory Ruling Filed by BellSouth Corporation, 7 FCC Rcd 1619 (1992), aff'd, Georgia Public Service Commission v. FCC, 5 F.3d 1499 (11th Cir. 1993). We do not comprehend BellSouth's point. By that logic, if a local call is used to access an information service, it follows that the entire transmission would be local. In yet another case cited by BellSouth, the FCC found that interstate foreign exchange service was interstate service, and thus came under the FCC's jurisdiction. New York Telephone Co.--Exchange System Access Line Terminal Charge for FX and CCSA Service, Memorandum Opinion and Order, 76 FCC 2d 349 (1980). Once again, it is difficult to discern BellSouth's point. We do not find this line of argument at all persuasive.

BellSouth further argues that "[t]he FCC has long held that the jurisdiction of a call is determined not by the physical location of the communications facilities or the type of facilities used, but by the nature of the traffic that flows over those facilities." This, too, is a perplexing argument in light of BellSouth's claims that the distant location of the host accessed over the Internet makes ISP traffic interstate, and that the nature of ISP traffic as either telecommunications or information service is irrelevant.

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As mentioned above, witness Hendrix did admit that "the FCC intended for ISP traffic to be 'treated' as local, regardless of jurisdiction." He emphasized the word treated, and explained that the FCC "did not say that the traffic was local but that the traffic would be treated as local."

#### FPSC Treatment

BellSouth dismisses Commission Order No. 21815, issued September 5, 1989, in Docket No. 880423-TP, Investigation into the Statewide Offering of Access to the Local Network for the Purpose of Providing Information Services, as an interim order. In that order, the Commission found that end user access to information service providers, which include Internet service providers, is by local service. In the proceeding, BellSouth's own witness testified that:

[C]onnections to the local exchange network for the purpose of providing an information service should be treated like any other local exchange service. (Order 21815, p. 25)

The Commission agreed with BellSouth's witness. The Commission also found that calls to ISPs should be viewed as jurisdictionally intrastate local exchange calls terminating at an ISP's location in Florida. BellSouth's position, as stated in the Order, was that:

calls should continue to be viewed as local exchange traffic terminating at the ESP's [Enhanced Service Provider's] location. Connectivity to a point out of state through an ESP should not contaminate the local exchange. (Order, p. 24) (ISPs are a subset of ESPs.)

In this case, Witness Hendrix claimed that Order 21815 was only an interim order that has now been overruled. He could not identify any Commission order establishing a different policy; nor could he specify the FCC order that supposedly overrules the Florida Commission order. Further, and most importantly, BellSouth admitted that this definition had not been changed at the time it entered into its Agreements.

It is clear that the treatment of ISP traffic was an issue long before the parties' Agreement was executed. We found, in Order No. 21815, as discussed above, that such traffic should be

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treated as local. Both WorldCom and BellSouth clearly were aware of this decision, and we presume that they considered it when they entered into their Agreement.

#### Intent of Parties

In determining what was the parties' intent when they executed their contract, we may consider circumstances that existed at the time the contract was entered into, and the subsequent actions of the parties. As WorldCom argues in its brief, "the intent of the parties is revealed not just by what is said, but by an analysis of all the facts and circumstances surrounding the disputed issue."

In James v. Gulf Life Insur. Co., 66 So.2d 62, 63 (Fla. 1953) the Florida Supreme Court cited with favor Contracts, 12 Am.Jur. § 250, pages 791-93, as a general proposition concerning contract construction in pertinent part as follows:

Agreements must receive a reasonable interpretation, according to the intention of the parties at the time of executing them, if that intention can be ascertained from their language ... Where the language of an agreement is contradictory, obscure, or ambiguous, or where its meaning is doubtful, so that it is susceptible of two constructions, one of which makes it fair, customary, and such as prudent men would naturally execute, while the other makes it inequitable, unusual, or such as reasonable men would not be likely to enter into, the interpretation which makes a rational and probable agreement must be preferred ... An interpretation which is just to both parties will be preferred to one which is unjust.

In the construction of a contract, the circumstances in existence at the time the contract was made should be considered in ascertaining the parties' intention. Triple E Development Co. v. Floridagold Citrus Corp., 51 So.2d 435, 438, rhq. den. (Fla. 1951).

What a party did or omitted to do after the contract was made may be properly considered. Vans Agnew v. Fort Myers Drainage Dist., 69 F.2d 244, 246, rhq. den., (5th Cir.). Courts may look to the subsequent action of the parties to determine the interpretation that they themselves place on the contractual language. Brown v. Financial Service Corp., Intl., 489 F.2d 144, 151 (5th Cir.) citing LaLow v. Codomo, 101 So.2d 390 (Fla. 1958).

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As noted above, Section 1.40 of the Agreement defines local traffic. The definition appears to be carefully drawn. Local traffic is said to be calls between two or more service users bearing NPA-NXX designations within the local calling area of the incumbent LEC. It is explained that local traffic includes traffic traditionally referred to as "local calling" and as "EAS." No mention is made of ISP traffic. Therefore, nothing in Section 1.40 sets ISP traffic apart from local traffic. It is further explained that all other traffic that originates and terminates between end users within the LATA is toll traffic.

As evidence of its intent, BellSouth argues that the interpretation of a contract must be one consistent with reason, probability, and the practical aspect of the transaction between the parties. BellSouth contends that it was "economically irrational for it to have agreed to subject ISP traffic to payment of reciprocal compensation." BellSouth claims it "had no rational economic reason to have agreed to pay reciprocal compensation for the ISP traffic, because...such assent would have likely guaranteed that BellSouth would lose money on every customer it serves who subscribed to an ISP served by a complainant."

In an example provided by BellSouth, a BellSouth residential customer subscribes to an ISP that is served by an ALEC. The customer uses the Internet for two hours per day. This usage would generate a reciprocal compensation payment to the ALEC of \$36.00 per month, assuming a 1 cent per minute reciprocal compensation rate. A Miami BellSouth customer pays \$10.65 per month for residential service. Thus, BellSouth would pay \$25.35 per month more to the ALEC than it receives from its customer. BellSouth claims that this unreasonable result is proof that it never intended to include ISP traffic as local for reciprocal compensation purposes.

Not all parties receive reciprocal compensation of 1 cent per minute. The MCIIm Agreement specifies a rate of \$0.002 per minute, not \$0.01. In this case, using BellSouth's example, the total reciprocal compensation would be \$7.20. MCIIm points out in its brief that the contract containing the \$0.01 rate is one to which BellSouth agreed. They argue that "[w]hether BellSouth agreed to this rate because they mistakenly thought that a rate five times higher than cost would give it some competitive advantage, or whether BellSouth agreed to it without thinking at all, it is not the Commission's role to protect BellSouth from itself."

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In support of its position that ISP traffic was intended to be treated as local in the Agreement, WorldCom points out that BellSouth charges its own ISP customers local business line rates for local telephone exchange service that enables the ISP's customers within the local calling area to connect with the ISP by means of a local call. Such calls are rated and billed as local, not toll.

MCIm also points out that BellSouth treats calls to ISPs that are its customers as local calls. BellSouth also offers its own ISP customers service out of its local exchange tariffs. MCIm asserts that while it treats its own customers one way, BellSouth would have ISP customers of the ALECs treated differently.

Besides BellSouth's treatment of its own ISP customers' traffic, there is nothing in the parties' agreements that addresses the practical aspect of how to measure the traffic. As TCG points out in its brief, BellSouth failed to take any steps to develop a tracking system to separately account for ISP traffic. The TCG contract was entered into in July 1996, but BellSouth did not attempt to identify ISP traffic until May or June of 1997. If the agreement did in fact exclude ISP traffic from the definition of local traffic, and thus the reciprocal compensation provisions of the agreement, it would be necessary to develop a tracking system.

The evidence indicates that the tracking system currently used by BellSouth is based on identifying the seven-digit number associated with an ISP. Absent that, as BellSouth witness Hendrix conceded, BellSouth must rely on estimates.

Intermedia also points out in its brief that:

If ISP traffic is not local as BellSouth contends, it would have been imperative for the parties to develop a system to identify and measure ISP traffic, because there is no ready mechanism in place for tracking local calls to ISPs. The calls at issue are commingled with all other local traffic and are indistinguishable from other local calls.

If BellSouth intended to exclude traffic terminated to ISPs from other local traffic, it would have needed to develop a way to measure traffic that distinguishes such calls from all other types of local calls with long holding times, such as calls to airlines and

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hotel reservations, and banks. In fact, there is no such agreed-upon system in place today.

This is perhaps the most telling aspect of the case. BellSouth made no effort to separate out ISP traffic from its own bills until the May-June 1997 time frame. WorldCom argues in its brief that BellSouth's "lack of action is especially glaring given Mr. Hendrix's acknowledgment that there are transport and termination costs associated with calls terminating at an ISP." Prior to that time, BellSouth may have paid some reciprocal compensation for ISP traffic. Witness Hendrix admitted, "We may have paid some, I will not sit here and say that we did not pay any." The other parties made no effort to separate out ISP traffic, and based on their position that the traffic should be treated as local, this is as one would expect. In some cases the contracts were entered into more than a year before this time period.

It appears from the record that there was little, if any, billing of reciprocal compensation by the ALECs until just before BellSouth began to investigate the matter. It was the receipt of the bills for considerable amounts of reciprocal compensation that triggered BellSouth's investigation of the matter, and its decision to begin removing ISP traffic from its own bills. If these large bills were never received, would BellSouth have continued to bill the ALECs for reciprocal compensation on ISP traffic? There would have been no reason for BellSouth to investigate, and therefore no reason for them to start separating their own traffic. Under the circumstances, we have difficulty concluding that the parties all knew that ISP traffic was interstate, and should be separated out before billing for reciprocal compensation on local traffic, as BellSouth contends.

#### Impact on Competition

The potential impact of BellSouth's actions on local competition is perhaps the most egregious aspect of the case. As witness Hendrix testified, The Telecommunications Act of 1996 "established a reciprocal compensation mechanism to encourage local competition." He argued that "The payment of reciprocal compensation for ISP traffic would impede local competition." We are more concerned with the adverse effect that BellSouth's refusal to pay reciprocal compensation could have on competition. We agree with this assessment by TCG witness Kouroupas:

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As competition grows, the smaller, leaner ALECs may well win other market segments from ILECs. If each time this occurs the ILEC, with its greater resources overall, is able to fabricate a dispute with ALECs out of whole cloth and thus invoke costly regulatory processes, local competition could be stymied for many years.

### Conclusion

We think the question of whether ISP traffic is local or interstate can be argued both ways. While it appears that the FCC may believe Internet usage is an interstate service, it also appears that it believes that it is not a telecommunications service. The FCC itself seems to be leaning toward the notion of severability of the information service portion of an Internet call from the telecommunications portion, which is often a local call.

Further, the FCC has allowed ISPs to purchase local service for provision of Internet services, without ever ruling on the extent to which the "local" characterization should apply. Indeed, as recently as April, 1998, the FCC itself indicated that a decision has not been made as to whether or not reciprocal compensation should apply. Thus, while there is some room for interpretation, we believe the current law weighs in favor of treating the traffic as local, regardless of jurisdiction, for purposes of the Interconnection Agreement. We also believe that the language of the Agreement itself supports this view. We therefore conclude on the basis of the plain language of the Agreement and of the effective law at the time the Agreement was executed, that the parties intended that calls originated by an end user of one and terminated to an ISP of the other would be rated and billed as local calls; else one would expect the definition of local calls in the Agreement to set out an explicit exception.

Even if we assume for the sake of discussion that the parties' agreements concerning reciprocal compensation can be said to be ambiguous or susceptible of different meanings, the parties' conduct at the time of, and subsequent to, the execution of the Agreement indicates that they intended to treat ISP traffic as local traffic. None of the parties singled ISP traffic out for special treatment during their negotiations. BellSouth concedes that it rates the traffic of its own ISP customers as local traffic. It would hardly be just for BellSouth to conduct itself in this way while treating WorldCom differently. Moreover, BellSouth made no attempt to separate out ISP traffic from its

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bills to the ALECs until it decided it did not want to pay reciprocal compensation for ISP traffic to the ALECS. BellSouth's conduct subsequent to the Agreement was for a long time consistent with the interpretation of Section 1.40 urged by WorldCom. A party to a contract cannot be permitted to impose unilaterally a different meaning than the one shared by the parties at the time of execution when it later becomes enlightened or discovers an unintended consequence.

BellSouth states in its brief that "the Commission must consider the extant FCC orders, case law, and trade usage at the time the parties negotiated and executed the Agreements." We have. By its own standards, BellSouth is found wanting. The preponderance of the evidence shows that BellSouth is required to pay WorldCom reciprocal compensation for the transport and termination of telephone exchange service local traffic that is handed off by BellSouth to WorldCom for termination with telephone exchange service end users that are Internet Service Providers or Enhanced Service Providers under the terms of the WorldCom and BellSouth Florida Partial Interconnection Agreement. Traffic that is terminated on a local dialed basis to Internet Service Providers or Enhanced Service Providers should not be treated differently from other local dialed traffic. We find that BellSouth must compensate WorldCom according to the parties' interconnection agreement, including interest, for the entire period the balance owed is outstanding.

#### The Teleport/TCG South Florida-BellSouth Agreement

Local traffic is defined in Section 1.D. of the Agreement between BellSouth and TCG as:

any telephone call that originates and terminates in the same LATA and is billed by the originating party as a local call, including any call terminating in an exchange outside of BellSouth's service area with respect to which BellSouth has a local interconnection arrangement with an independent LEC, with which TCG is not directly interconnected.

This Agreement was entered into by the parties on July 15, 1996, and was subsequently approved by the Commission in Docket No. 960862-TP. Under TCG's prior Agreement with BellSouth, ISP traffic was treated as local.



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The TCG Agreement states in Section IV.B and part of I.C:

The delivery of local traffic between parties shall be reciprocal and compensation will be mutual according to the provisions of this Agreement.

Each party will pay the other for terminating its local traffic on the other's network the local interconnection rates as set forth in Attachment B-1, incorporated herein by this reference.

No exceptions have been made to the definition of local traffic to exclude ISP traffic. The facts surrounding this Agreement, and the arguments made by the parties, are essentially the same as the WorldCom Agreement, and we will not reiterate them here. Our decision is the same. The preponderance of the evidence shows that BellSouth is required to pay TCG reciprocal compensation for the transport and termination of telephone exchange service local traffic that is handed off by BellSouth to TCP for termination with telephone exchange service end users that are Internet Service Providers or Enhanced Service Providers under the terms of the TCG and BellSouth Florida Partial Interconnection Agreement. Traffic that is terminated on a local dialed basis to Internet Service Providers or Enhanced Service Providers should not be treated differently from other local dialed traffic. We find that BellSouth must compensate TCG according to the parties' interconnection agreement, including interest, for the entire period the balance owed is outstanding.

#### The MCI-BellSouth Agreement

The Agreement between MCI and BellSouth defines local traffic in Attachment IV, Subsection 2.2.1. That subsection reads as follows:

The parties shall bill each other reciprocal compensation at the rates set forth for Local Interconnection in this Agreement and the Order of the FPSC. Local Traffic is defined as any telephone call that originates in one exchange and terminates in either the same exchange, or a corresponding Extended Area (EAS) exchange. The terms Exchange and EAS exchanges are defined and specified in Section

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A3 of BellSouth's General Subscriber Service  
Tariff.

MCI witness Martinez testified that no exception to the definition of local traffic was suggested by BellSouth. MCI argues in its brief that "[i]f BellSouth wanted a particular exception to the general definition of local traffic, it had an obligation to raise it."

The facts surrounding this Agreement, and the arguments made by the parties, are essentially the same as the WorldCom Agreement, and we will not reiterate them here. Our decision is the same. The preponderance of the evidence shows that BellSouth is required to pay MCI reciprocal compensation for the transport and termination of telephone exchange service local traffic that is handed off by BellSouth to MCI for termination with telephone exchange service end users that are Internet Service Providers or Enhanced Service Providers under the terms of the MCI and BellSouth Florida Partial Interconnection Agreement. Traffic that is terminated on a local dialed basis to Internet Service Providers or Enhanced Service Providers should not be treated differently from other local dialed traffic. We find that BellSouth must compensate MCI according to the parties' interconnection agreement, including interest, for the entire period the balance owed is outstanding.

The Intermedia-BellSouth Agreement

The Agreement with Intermedia defines Local Traffic in Section 1(D) as:

any telephone call that originates in one exchange and terminates in either the same exchange, or a corresponding Extended Area Service (EAS) exchange. The terms Exchange, and EAS exchanges are defined and specified in Section A3 of BellSouth's General Subscriber Service Tariff. (TR 142-143)

The portion regarding reciprocal compensation, Section IV(A) states:

The delivery of local traffic between the parties shall be reciprocal and compensation will be mutual according to the provisions of this Agreement. (TR 143)

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Section IV(B) states:

Each party will pay the other party for terminating its local traffic on the other's network the local interconnection rates as set forth in Attachment B-1, by this reference incorporated herein.

The evidence shows that no exceptions were made to the definition of local traffic to exclude ISP traffic in the Intermedia-BellSouth Agreement. The facts surrounding this Agreement, and the arguments made by the parties, are essentially the same as the WorldCom Agreement, and we will not reiterate them here. Our decision is the same. The preponderance of the evidence shows that BellSouth is required to pay Intermedia reciprocal compensation for the transport and termination of telephone exchange service local traffic that is handed off by BellSouth to Intermedia for termination with telephone exchange service end users that are Internet Service Providers or Enhanced Service Providers under the terms of the Intermedia and BellSouth Florida Partial Interconnection Agreement. Traffic that is terminated on a local dialed basis to Internet Service Providers or Enhanced Service Providers should not be treated differently from other local dialed traffic. We find that BellSouth must compensate Intermedia according to the parties' interconnection agreement, including interest, for the entire period the balance owed is outstanding.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that under the terms of the parties' Interconnection Agreements, BellSouth Telecommunications, Inc. is required to pay Worldcom Technologies, Inc., Teleport Communications Group Inc./TCG South Florida, Intermedia Communications, Inc., and MCI Metro Access Transmission Services, Inc., reciprocal compensation for the transport and termination of telephone exchange service that is terminated with end users that are Internet Service Providers or Enhanced Service Providers. BellSouth Telecommunications, Inc. must compensate the complainants according to the interconnection agreements, including interest, for the entire period the balance owed is outstanding. It is further

ORDERED that these dockets shall be closed.

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By ORDER of the Florida Public Service Commission this 15th  
Day of September, 1998.

/s/ Blanca S. Bayó

BLANCA S. BAYÓ, Director  
Division of Records and Reporting

This is a facsimile copy. A signed  
copy of the order may be obtained by  
calling 1-850-413-6770.

( S E A L )

MCB

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

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**FAXED**  
January 8, 1999

BY HAND DELIVERY

Nancy White, Esq.  
Nancy Sims  
BellSouth Telecommunications, Inc.  
150 South Monroe Street  
Room 400  
Tallahassee, FL 32301

Re: Demand for Payment of Reciprocal Compensation

Dear Misses White and Sims:

Demand is made that BellSouth Telecommunications, Inc. pay to Intermedia Communications Inc. Twenty-Three Million, Six Hundred Seventeen Thousand, and Three Hundred Twenty-Nine Dollars (\$23,617,329.00), which represents the reciprocal compensation payments due and owing to Intermedia in Florida as of November 30, 1998, under the interconnection agreement between BellSouth and Intermedia dated July 1, 1996, as amended. Reciprocal compensation amounts accruing after November 30, 1998 will be submitted to you for payment in a separate demand letter.

Intermedia's right under its interconnection agreement to receive compensation from BellSouth for the transport and termination of local calls, including those calls destined to Internet Service Providers, has been confirmed by the Florida Public Service Commission in its Final Order Resolving Complaints, Order No. PSC-98-1216-FOF-TP, Consolidated Docket Nos. 971478-TP, 980184-TP, 980495-TP and 980499-TP (issued September 15, 1998). That Order states, in relevant part:

ORDERED by the Florida Public Service Commission that under the terms of the parties' Interconnection Agreement, BellSouth Telecommunications, Inc. is required to pay WorldCom Technologies, Inc., Teleport Communications Group Inc./TCG South Florida, Intermedia Communications Inc., and MCI Metro Access Transmission Services, Inc., reciprocal compensation for the transport and termination of telephone exchange service that is terminated with end users that are Internet Service Providers or Enhanced Service Providers. BellSouth

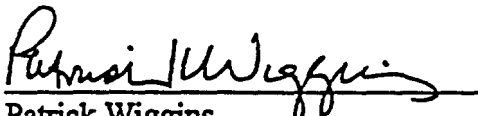
Nancy White, Esq.  
Nancy Sims  
January 8, 1999  
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Telecommunications, Inc. must compensate the complainants according to the interconnection agreements, including interest, for the entire period the balance owed is outstanding. (Order at 22.)

Please forward the aforementioned amount, on or before January 22, 1999, to Intermedia Communications Inc., P.O. Box 915238, Orlando, Florida 32891-5238. You may direct any inquiries concerning this demand letter to the undersigned counsel. Intermedia reserves the right to pursue other legal options in the event BellSouth fails to timely comply with this demand letter.

Sincerely,

INTERMEDIA COMMUNICATIONS INC.

By:   
Patrick Wiggins  
Its Attorneys

cc: Walter D'Haesleer  
Martha Brown, Esq.  
Heather Burnett Gold, Esq.  
Julia Strow  
Steve Brown  
Jonathan E. Canis, Esq.  
Enrico C. Soriano, Esq.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of WorldCom Technologies, Inc. against BellSouth Telecommunications, Inc. for breach of terms of Florida Partial Interconnection Agreement under Sections 251 and 252 of the Telecommunications Act of 1996, and request for relief.

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DOCKET NO. 971478-TP

In re: Complaint of Teleport Communications Group Inc./TCG South Florida against BellSouth Telecommunications, Inc. for breach of terms of interconnection agreement under Section 252 of the Telecommunications Act of 1996, and request for relief.

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DOCKET NO. 980184-TP

In re: Complaint of Intermedia Communications, Inc. against BellSouth Telecommunications, Inc. for breach of terms of Florida Partial Interconnection Agreement under Sections 251 and 252 of the Telecommunications Act of 1996 and request for relief.

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DOCKET NO. 980495-TP

In re: Complaint by MCI Metro Access Transmission Services, Inc. against BellSouth Telecommunications, Inc. for breach of approved interconnection agreement by failure to pay compensation for certain local traffic.

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DOCKET NO. 980499-TP  
ORDER NO. PSC-99-0758-FOF-TP  
ISSUED: April 20, 1999

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The following Commissioners participated in the disposition of this matter:

JOE GARCIA, Chairman  
J. TERRY DEASON  
SUSAN F. CLARK  
JULIA L. JOHNSON  
E. LEON JACOBS, JR.

ORDER DENYING MOTION FOR STAY PENDING APPEAL

BY THE COMMISSION:

BACKGROUND

On October 15, 1998, BellSouth Telecommunications, Inc. (BellSouth) filed a Notice of Appeal of Commission Order No. PSC-98-1216-FOF-TP, issued September 15, 1998, in the complaint dockets referenced above. BellSouth has appealed the Commission's decision to the United States District Court for the Northern District of Florida, pursuant to 47 U.S.C. section 252(e)(6). In Order No. PSC-98-1216-FOF-TP, the Commission determined that BellSouth was required by the terms of its interconnection agreements to pay reciprocal compensation to WorldCom Technologies, Inc. (WorldCom), Teleport Communications Group, Inc. (TCG), Intermedia Communications, Inc. (Intermedia), and MCImetro Access Transmission Services, Inc. (MCIm) for the transport and termination of calls to Internet Service Providers (ISPs). At the time BellSouth filed its Notice of Appeal with the Commission, it also filed a Motion for Stay Pending Appeal of Order No. PSC-98-1216-FOF-TP. WorldCom, TCG, Intermedia and MCIm filed a Joint Response in Opposition to the motion for stay on October 28, 1998. No party filed a request for oral argument.

We addressed BellSouth's Motion at our March 30, 1999, Agenda Conference. We determined that BellSouth had failed to demonstrate that a stay pending appeal is warranted. Our reasons for that determination are set forth below.



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DECISION

BellSouth contends that it is entitled to an automatic stay pending judicial review pursuant to Rule 25-22.061(1)(a), Florida Administrative Code, because the Commission's order on appeal "involves a refund of moneys to customers." In the alternative, BellSouth contends that we should grant its motion pursuant to Rule 25-22.061(2), Florida Administrative Code, because it has raised serious questions, acknowledged in our Order, about the jurisdictional nature of ISP traffic. BellSouth also contends that it will be irreparably harmed if we require it to pay the complainants charges for transport and termination of traffic to ISPs, because millions of dollars are at stake. BellSouth suggests that it may not be able to recoup some of the payments to the complainants if it ultimately prevails on appeal. BellSouth argues that the delay in implementation of the Commission's order will not be contrary to the public interest or cause substantial harm to the complainants, because BellSouth has already placed monies due to WorldCom under the Order in escrow, and will be able to return the amounts owed to the other complainants as well, when the appeal is final. Finally, BellSouth contends that it will not be necessary to require BellSouth to post a bond or issue some other corporate undertaking as a condition of the stay, as Rules 25-22.061(1)(a) and 25-22.061(2), Florida Administrative Code, permit.

The Complainants urge us to deny the motion for stay for three reasons. First, they claim that we do not have authority to grant a stay pending review of a case in the Federal District Court. Second, they argue that if we determine that we do have the authority to grant a stay, BellSouth is clearly not entitled to one under Rule 25-22.061(1)(a), Florida Administrative Code, because the refund in question here is not due to "customers", as the rule contemplates. Third, they contend that BellSouth is not entitled to a stay pursuant to the discretionary stay available under Rule 25-22.061(2), Florida Administrative Code. They argue that BellSouth is not likely to prevail on appeal, and will not suffer irreparable harm if the stay is not granted. They contend that further delay will harm the development of competition and the public interest.

Authority to Grant a Stay Pending Appeal

The Telecommunications Act of 1996, at 47 U.S.C. § 252(e)(6), provides that determinations of state commissions made under the provisions of section 252 are reviewable in an appropriate Federal

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District Court. BellSouth has appealed the Commission's order to the District Court of the Northern District of Florida. Relying on a recent decision by the 7th Circuit that the District Court for the Northern District of Illinois should not have granted a stay of the Illinois Commerce Commission's ISP reciprocal compensation order<sup>1</sup>, the complainants argue, somewhat obliquely, that because BellSouth must seek an injunction in the District Court, rather than a stay, to delay the effectiveness of this Commission's order there, we somehow lose authority to grant a stay of the order. We do not agree. The Commission's rules provide for a stay of its decisions under certain circumstances, and both Florida appellate rules and Federal appellate rules provide that a party may seek a stay from the lower tribunal of an order on appeal, whether the lower tribunal is an administrative agency or a lower court. See Section 120.68(3), Florida Statutes, Rule 9.010, Florida Rules of Appellate Procedure, and Rule 18, Federal Rules of Appellate Procedure. While we do not believe that we should grant a stay of Order No. PSC-98-1216-FOF-TP, we do believe that we have the authority to do so.

Rules 25-22.061(1)(a) and 25-22.061(2), Florida Administrative Code

Rule 25-22.061(1)(a), Florida Administrative Code, provides:

When the order being appealed involves the refund of moneys to customers or a decrease in rates charged to customers, the Commission shall, upon motion filed by the utility or company affected, grant a stay pending judicial proceedings. The stay shall be conditioned upon the posting of good and sufficient bond, or the posting of a corporate undertaking, and such other conditions as the Commission finds appropriate.

BellSouth relies upon this rule as authority for an automatic stay of our decision interpreting the local traffic transport and

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<sup>1</sup>Illinois Bell Telephone Company v. WorldCom Technologies, Inc., 157 F.3d 500 (7th Cir. 1998).

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termination provisions of its interconnection agreements with the complainants. This rule does not apply to this case, because, contrary to BellSouth's assertion, the complainants, competitive telecommunications carriers, are not "customers" for purposes of this rule. The rule is designed to apply to rate cases or other proceedings involving rates and charges to end user ratepayers or consumers, not to contract disputes between interconnecting telecommunications providers. Furthermore, this case does not involve a "refund" or a "decrease" in rates. It involves payment of money pursuant to contractual obligations.

Rule 25-22.061(2), Florida Administrative Code, is applicable to this case. That rule provides:

Except as provided in subsection (1), a party seeking to stay a final or nonfinal order of the Commission pending judicial review shall file a motion with the Commission, which shall have authority to grant, modify, or deny such relief. A stay pending review may be conditioned upon the posting of a good and sufficient bond or corporate undertaking, other conditions, or both. In determining whether to grant a stay, the Commission may, among other things, consider:

- (a) Whether the petitioner is likely to prevail upon appeal;
- (b) Whether the petitioner has demonstrated that he is likely to suffer irreparable harm if the stay is not granted; and
- (c) Whether the delay will cause substantial harm or be contrary to the public interest.

In its motion, BellSouth claims that it has raised issues of great importance regarding the appropriate treatment of ISP traffic. BellSouth's fundamental point is that if ISP traffic is jurisdictionally interstate, then the transport and termination of that traffic is not subject to the local traffic reciprocal compensation provisions of its interconnection agreements with the complainants.

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DOCKETS NOS. 971478-TP, 980164-TP, 980495-TP, 980499-TP  
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At the time Order No. PSC-98-1216-FOF-TP was issued, and at the time this motion for stay and response were filed, the FCC had not decided whether it would consider ISP traffic interstate traffic, or whether such traffic would be subject to reciprocal compensation under the local interconnection provisions of the Act. We addressed the uncertainty regarding the FCC's characterization of ISP traffic in detail in our Order, and we decided that the issue was not critical to our decision. Basing our decision on traditional principles of contract construction, we decided that the language of the interconnection agreements, the intent of the parties, and Federal and State law at the time the agreements were executed showed that ISP traffic was local traffic for purposes of reciprocal compensation under the agreements. We said:

Regardless of what the FCC ultimately decides, it has not decided anything yet, and we are concerned here with an existing interconnection agreement, executed by the parties in 1996. Our finding that ISP traffic should be treated as local for purposes of the subject interconnection agreement is consistent with the FCC's treatment of ISP traffic at the time the agreement was executed, all pending jurisdictional issues aside.

Order No. PSC-98-1216-FOF-TP, page 9.

On February 26, 1999, the FCC issued Order 99-38, Declaratory Ruling in CC Docket No. 96-98 and Notice of Proposed Rulemaking in CC Docket No. 98-68. In that Order, the FCC declared that it considered ISP traffic to be jurisdictionally interstate. It did not decide, however, whether ISP traffic should be treated as interstate traffic for purposes of local interconnection agreements. It issued a NPRM inviting comments on that issue. It also declared that it considered this determination to be prospective only, and specifically stated that its decision should not affect existing interconnection agreements or decisions by state commissions and Federal courts. The FCC stated:

[I]n the absence of any contrary Commission rule, parties entering into interconnection agreements may reasonably have agreed, for the purposes of determining whether reciprocal compensation should apply to ISP-bound

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traffic, that such traffic should be treated in the same manner as local traffic. When construing the parties' agreements to determine whether the parties so agreed, state commissions have the opportunity to consider all the relevant facts, including the negotiation of the agreements in the context of this Commission's longstanding policy of treating this traffic as local, and the conduct of the parties pursuant to those agreements. . . .

While to date the Commission has not adopted a specific rule governing this matter, we note that our policy of treating ISP-bound traffic as local for purposes of interstate access charges would, if applied in the separate context of reciprocal compensation, suggest that such compensation is due for that traffic.

Order 99-38 at pages 15-17.

As mentioned above, BellSouth based its argument that it is likely to prevail on appeal on the fact that the FCC would determine that ISP traffic was jurisdictionally interstate. While the FCC has now done that, its firm assertion that the determination is prospective and should not affect existing interconnection agreements convinces us that BellSouth is not likely to prevail on appeal.

With regard to BellSouth's assertion that it will suffer irreparable harm if it must comply with the order at this time, and its concomitant assertion that there will be no harm to the public interest if the stay is granted, we adopt the reasoning of the 7th Circuit Court of Appeals when it denied Ameritech's motion for stay in Illinois Bell:

In this case the cost of false negatives ("irreparable injury," to use the traditional term) are negligible. Ameritech can easily recover the money if it prevails on appeal. All of the other carriers are solvent, and Ameritech can recoup by setoff in the ongoing reciprocal-compensation program. . . . Even if

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Ameritech pays the market cost of capital during the period of delay, so that the other carriers are indifferent between money now and money later, delay impedes the ability of the Illinois Commerce Commission to implement a policy of reciprocal compensation. Delay effectively moves regulatory power from the state commission to the federal court (or to Ameritech, which can determine when orders take effect). Although such transfers may be of little moment one case at a time they are disruptive when repeated over many cases - and the struggle in the communications business between the Baby Bells and their rivals is a repeat-play game in markets, agencies, and courts alike.

Illinois Bell Telephone Company v. WorldCom Technologies, 157 F.3d 500, 503.

The harm to the development of competition from further delay is the discernible harm in this case. Harm to the development of competition is harm to the public interest.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that, for the reasons set forth above, BellSouth Telecommunications, Inc.'s Motion for Stay Pending Appeal is denied. It is further

ORDERED that these dockets shall be closed.

By ORDER of the Florida Public Service Commission this 20th day of April, 1999.

BLANCA S. BAYÓ, Director  
Division of Records and Reporting

By: /s/ Kay Flynn  
Kay Flynn, Chief  
Bureau of Records

This is a facsimile copy. A signed copy of the order may be obtained by calling 1-850-413-6770.

ORDER NO. PSC-99-0758-FOF-TP  
DOCKETS NOS. 971478-TP, 980184-TP, 980495-TP, 980499-TP  
PAGE 9

( S E A L )

WCE

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.

WIGGINS & VILLACORTA, P.A.  
ATTORNEYS AT LAW

POST OFFICE DRAWER 1657  
TALLAHASSEE, FLORIDA 32302

2145 DELTA BOULEVARD, SUITE 200  
TALLAHASSEE, FLORIDA 32303

TELEPHONE (850) 385-6007  
FACSIMILE (850) 385-6008  
INTERNET: wiggvill@nettally.com

May 4, 1999

BY HAND DELIVERY

Ms. Nancy Sims, Director of Regulatory  
BellSouth Telecommunications, Inc.  
150 South Monroe Street  
Room 400  
Tallahassee, FL 32301

Re: Demand for Payment of Reciprocal Compensation

Dear Ms. Sims:

Further to my letter of January 8, 1999, demand is hereby renewed that BellSouth Telecommunications, Inc. pay to Intermedia Communications Inc., thirty four million, five hundred sixty three thousand, seven hundred and eighty dollars and forty nine cents (\$34,563,780.49), which represents the reciprocal compensation payments now due and owing to Intermedia in Florida as of March 30, 1999,<sup>1</sup> under the interconnection agreement between BellSouth and Intermedia dated July 1, 1996, as amended. Reciprocal compensation amounts accruing after March 30, 1999, will be submitted to you for payment in a separate demand letter.

Intermedia's right under its interconnection agreement to receive compensation from BellSouth for the transport and termination of local calls, including those calls destined to Internet Service Providers, was confirmed by the Florida Public Service Commission in its Final Order Resolving Complaints, Order No. PSC-98-1216-FOF-TP, Consolidated Docket Nos. 971478-TP, 980184-TP, 980495-TP and 980499-TP (issued September 15, 1998). That Order states, in relevant part:

ORDERED by the Florida Public Service Commission that under the terms of the parties' Interconnection Agreement, BellSouth Telecommunications, Inc. is required to pay WorldCom Technologies, Inc., Teleport Communications Group Inc./TCG South Florida, Intermedia Communications Inc., and MCI Metro

<sup>1</sup> Net, including payments received in April 1999.



Nancy Sims.  
April 30, 1999  
Page Two

Access Transmission Services, Inc., reciprocal compensation for the transport and termination of telephone exchange service that is terminated with end users that are Internet Service Providers or Enhanced Service Providers. BellSouth Telecommunications, Inc. must compensate the complainants according to the interconnection agreements, including interest, for the entire period the balance owed is outstanding. (Order at 22.)

On April 20, 1999, the Commission issued Order No. PSC-99-0758-FOF-TP. In that Order, the Commission denied BellSouth's motion for stay of Order No. PSC-98-1216-FOF-TP pending appeal.

Please forward the aforementioned amount, on or before May 17, 1999, to Intermedia Communications Inc., P.O. Box 915238, Orlando, Florida 32891-5238. You may direct any inquiries concerning this demand letter to the undersigned counsel. Intermedia reserves the right to pursue other legal options in the event BellSouth fails to timely comply with this demand letter.

Sincerely,

**INTERMEDIA COMMUNICATIONS INC.**

By:

\_\_\_\_\_  
Patrick Knight Wiggins  
Its Attorney

cc: Walter D'Haeseleer  
Catherine Bedell, Esq.  
Heather Burnett Gold, Esq.  
Julia Strow  
Steve Brown  
Lans Chase  
Scott Sapperstein

Mary K. Keyer  
General Attorney

BellSouth Telecommuni-  
Legal Department Suite  
675 West Peachtree Str  
Atlanta, Georgia 30375  
Telephone 404.311.7777  
Facsimile 404.311.7777

May 11, 1999

Patrick Wiggins, Esq.  
Intermedia Communications, Inc.  
2145 Delta Boulevard  
Suite 200  
Tallahassee, Florida 32303

Re: Demand for Payment of Reciprocal Compensation

Dear Mr. Wiggins:

I am responding to your letter dated May 4, 1999, to Nancy Sims, Director of Regulatory, demanding payment of reciprocal compensation for traffic terminated to internet service providers. Your letter refers to the interconnection agreement between BellSouth Telecommunications, Inc., and Intermedia, as well as the Florida Public Service Commission Order No. PSC-98-1216-FOF-TP issued September 15, 1998, and Order No. PSC-98-1216-FOF-TP issued April 20, 1999.

As you know, BellSouth has appealed the Order issued September 15, 1998, and has filed with the United States District Court for the Northern District of Florida a motion to stay that Order. Until this matter is fully resolved, BellSouth will continue the status quo with respect to Intermedia.

Sincerely,

  
Mary K. Keyer

cc: Nancy White  
Nancy Sims

WIGGINS & VILLACORTA, P.A.

ATTORNEYS AT LAW

POST OFFICE DRAWER 1657  
TALLAHASSEE, FLORIDA 32302

2145 DELTA BOULEVARD, SUITE 200  
TALLAHASSEE, FLORIDA 32303

TELEPHONE (850) 385 6007  
FACSIMILE (850) 385 6008  
INTERNET: wiggvill@netally.com

TELECOPY

DATE:  July 15, 1999

TO: Julia Strow 813 829 7723

FROM: Charles Pellegrini

---

This telecopy consists of 5 page(s) including this cover page. Please deliver as soon as possible. If you have any questions, please call (850) 385 6007.

\*\*\*\*\*

BellSouth reciprocal compensation spreadsheets.

*This message contains information that is confidential, may be protected by the attorney/client or other applicable privileges, and may constitute non-public information. It is intended to be conveyed only to the designated recipient(s). If you are not an intended recipient of this message, please notify the sender at 850 385 6007. Unauthorized use, dissemination, distribution, or reproduction of this message is strictly prohibited and may be unlawful.*

Legal Department

NANCY B. WHITE  
General Counsel-Florida

BellSouth Telecommunications, Inc.  
150 South Monroe Street  
Room 400  
Tallahassee, Florida 32301  
(904) 347-5555

VIA FEDERAL EXPRESS

July 2, 1999

Patrick K. Wiggins, Esq.  
Wiggins & Villacorta  
2145 Delta Boulevard  
Suite 200  
Tallahassee, FL 32303

**Re: BellSouth Telecommunications, inc. v. WorldCom Technologies,  
Inc., et al., USCA No. 4:98cv352-RH**

Dear Mr. Wiggins:

On June 1, 1999, the United States District Court for the Northern District of Florida denied BellSouth's request for a stay in the above captioned matters. Therefore, pursuant to Order No. PSC-98-1216-FOF-TP, issued by the Florida Public Service Commission on September 15, 1998, BellSouth is enclosing its check for \$12,723,883.38 for April, 1999 and all prior periods. A spreadsheet detailing BellSouth's calculation of this amount is also attached for your convenience. BellSouth will continue calculating and begin remitting monies owed to you on a monthly basis beginning with the June, 1999 bills.

It remains BellSouth's position that such calls to Internet Service Providers are interstate in nature and not subject to reciprocal compensation. Be advised that any payments made by BellSouth due to the denial of its request for stay does not constitute a waiver of BellSouth's position or a waiver of BellSouth's rights currently on appeal. When a final, non-appealable order is rendered upholding BellSouth's position, BellSouth will seek refund of any monies paid plus interest. In the unlikely event that BellSouth's position is not upheld by a final non-appealable order, BellSouth will bill your company for all monies due BellSouth for this interstate traffic.

If your client desires to discuss the specifics of the calculation, please contact Jerry Hendrix at (404) 927-7503.

Sincerely,

A handwritten signature in black ink, appearing to read "Nancy B. White". The signature is fluid and cursive, with the first name "Nancy" being more prominent.

Nancy B. White

Enclosures

cc: David Smith, Esq.  
Raoul Cantero, Esq.

159213



Explanation of Payment  
(Detach and retain for your records)

EXHIBIT H  
PAGE 4 OF 9

2-05968387/8

\*\*\*\*\*  
\* SPECIAL HANDLING INSTRUCTIONS \*  
\* Overnight / Alternate Mailing YQ8 \*  
\*\*\*\*\*

GROSS	DISCOUNT	NET	INVOICE/DESCRIPTION/FOR QUESTIONS CALL
12,723,883.38	0.00	12,723,883.38	NA
		12,723,883.38	LAGRANGE, LORRAINE E (205) 714-0237
			PAID TO INTERMEDIA COMMUNICATIONS INC
			ON JUL 01 1999

⌋ To Detach Check, Fold and Tear Along Perforation ⌋

THE FACE OF THIS DOCUMENT IS MULTICOLORED WITH AN ARTIFICIAL WATERMARK ON THE BACK.



2-05968387/8

Date: 07/01/99 64-78  
611

Pay: \*12,723,883 DOLLARS AND 38 CENTS

PAY ONLY 12,723,883.38

To: INTERMEDIA COMMUNICATIONS INC  
The ATTN-ACCOUNTS RECEIVABLE  
Orders PO BOX 915121  
Of ORLANDO, FL 32891-5121

VOID AFTER 180 DAYS

SUNTRUST

*Phyllis Camp*  
Treasury Cashier  
BELLSOUTH  
Telecommunications, Inc.

12,723,883.38



0000009707301000002404000010010301037076000000

Financial Services  
P.O. Box 467623  
Atlanta, GA 31146-7623

 **BELLSOUTH**

07/01/99

**URGENT**

NANCY WHITE  
STE 1910  
150 WEST FLAGLER ST  
MIAMI, FL 33130

**OPEN IMMEDIATELY**

## Local ISP Payment Due Intermedia

Columns	1	2	3	4	5
	Total MOUs Invoiced	ISP Factor	Local Rate	Total ISP Local Due	LPC at 1.0% per month
Feb-97	17,516,426	0.9	\$ 0.01028	\$ 182,061.97	
Mar-97	19,939,435	0.9	\$ 0.01028	\$ 184,479.85	\$ 1,620.62
Apr-97	22,527,478	0.9	\$ 0.01028	\$ 208,424.23	\$ 3,465.42
May-97	34,413,962	0.9	\$ 0.01028	\$ 318,397.98	\$ 5,549.66
Jun-97	44,135,205	0.9	\$ 0.01028	\$ 408,338.92	\$ 8,733.64
Jul-97	49,567,876	0.9	\$ 0.01028	\$ 458,601.99	\$ 12,617.03
Aug-97	58,136,603	0.9	\$ 0.01028	\$ 537,879.85	\$ 17,392.64
Sep-97	61,062,697	0.9	\$ 0.01028	\$ 584,952.07	\$ 22,759.23
Oct-97	71,802,321	0.9	\$ 0.01028	\$ 684,315.07	\$ 28,395.93
Nov-97	74,405,899	0.9	\$ 0.01028	\$ 688,403.38	\$ 35,024.00
Dec-97	85,832,175	0.9	\$ 0.01028	\$ 794,119.28	\$ 41,892.41
Jan-98	113,421,542	0.9	\$ 0.01028	\$ 1,049,376.11	\$ 49,815.57
Feb-98	111,986,235	0.9	\$ 0.01028	\$ 1,036,096.65	\$ 60,285.52
Mar-98	135,281,170	0.9	\$ 0.01028	\$ 1,251,621.38	\$ 70,622.97
Apr-98	148,785,338	0.9	\$ 0.01028	\$ 1,378,561.95	\$ 83,110.77
May-98	136,439,971	0.9	\$ 0.01028	\$ 1,282,342.81	\$ 98,834.86
Jun-98	17,065,675	0.9	\$ 0.00200	\$ 130,718.22	\$ 109,486.33
	108,656,674	0.9	\$ 0.00200	\$ 195,582.01	
	9,878,399	0.9	\$ 0.00200	\$ 17,781.12	
Jul-98	19,936,070	0.9	\$ 0.00200	\$ 119,558.93	\$ 110,769.89
	127,306,655	0.9	\$ 0.00200	\$ 229,151.98	
	11,163,384	0.9	\$ 0.00200	\$ 20,094.09	
Aug-98	22,045,623	0.9	\$ 0.00200	\$ 39,682.12	\$ 112,339.76
	155,759,111	0.9	\$ 0.00200	\$ 280,366.40	
	11,099,766	0.9	\$ 0.00200	\$ 19,978.58	
Sep-98	22,443,065	0.9	\$ 0.00200	\$ 140,397.52	\$ 114,211.89
	168,018,749	0.9	\$ 0.00200	\$ 302,433.75	
	10,302,585	0.9	\$ 0.00200	\$ 18,544.65	
Oct-98	23,077,272	0.9	\$ 0.00200	\$ 141,539.09	\$ 110,146.63
	171,655,628	0.9	\$ 0.00200	\$ 308,980.13	
	10,201,624	0.9	\$ 0.00200	\$ 18,362.92	
Nov-98	210,777,124	0.9	\$ 0.00200	\$ 379,398.82	\$ 116,722.50
Dec-98	154,977,667	0.9	\$ 0.00200	\$ 278,959.80	\$ 117,314.78
	64,064,865	0.9	\$ 0.00200	\$ 115,316.78	
Jan-99	267,928,952	0.9	\$ 0.00200	\$ 482,272.11	\$ 118,983.56
Feb-99	254,990,416	0.9	\$ 0.00200	\$ 458,982.75	\$ 124,152.55
Mar-99	308,363,755	0.9	\$ 0.00200	\$ 555,054.78	\$ 107,420.33
Apr	334,628,373	0.9	\$ 0.00200	\$ 600,631.07	\$ 108,296.40
Column Totals				\$ 15,435,887.67	\$



[illegible]

## Intermedia Non ISP Payments

Columns	1	2	3	4	5	6		
	Total MOUs Involved	Non ISP Factor	PLU	Correct Local Rate	Non-ISP Local Due	Local Rate Paid	Non-ISP Local \$ Paid	Difference In Amt Due & Amt Pd
Feb-97	17,516,426	0.1	0.750	\$ 0.01028	\$ 13,505.16	0.01028	\$13,505.16	\$ -
Mar-97	19,939,435	0.1	0.750	\$ 0.01028	\$ 15,373.30	0.01028	\$15,373.30	\$ -
Apr-97	22,527,478	0.1	0.750	\$ 0.01028	\$ 17,388.69	0.01028	\$17,368.69	\$ -
May-97	34,413,962	0.1	0.750	\$ 0.01028	\$ 26,533.16	0.01028	\$26,533.16	\$ -
Jun-97	44,135,205	0.1	0.750	\$ 0.01028	\$ 34,028.24	0.01028	\$34,028.24	\$ -
Jul-97	49,567,876	0.1	0.750	\$ 0.01028	\$ 38,218.83	0.01853	\$39,257.76	\$ (1,040.93)
Aug-97	58,136,603	0.1	0.750	\$ 0.01028	\$ 44,823.32	0.01853	\$46,044.19	\$ (1,220.87)
Sep-97	61,062,697	0.1	0.750	\$ 0.01028	\$ 47,079.34	0.01853	\$48,361.66	\$ (1,282.32)
Oct-97	71,802,321	0.1	0.750	\$ 0.01028	\$ 55,359.59	0.01853	\$56,867.44	\$ (1,507.85)
Nov-97	74,405,899	0.1	0.750	\$ 0.01028	\$ 57,368.95	0.01853	\$58,929.47	\$ (1,562.52)
Dec-97	85,832,175	0.1	0.750	\$ 0.01028	\$ 68,176.61	0.01853	\$67,979.08	\$ (1,802.47)
Jan-98	113,421,542	0.1	0.750	\$ 0.01028	\$ 87,448.01	0.01853	\$89,829.86	\$ (2,381.85)
Feb-98	111,986,235	0.1	0.750	\$ 0.01028	\$ 86,341.39	0.01853	\$88,693.10	\$ (2,351.71)
Mar-98	135,281,170	0.1	0.750	\$ 0.01028	\$ 104,301.78	0.01853	\$107,142.69	\$ (2,840.91)
Apr-98	148,785,338	0.1	0.997	\$ 0.01028	\$ 152,492.47	0.01853	\$156,645.96	\$ (4,153.49)
May-98	136,439,971	0.1	0.997	\$ 0.01028	\$ 139,839.51	0.01028	\$137,034.30	\$ 2,805.21
Jun-98	17,065,675	0.1	0.997	\$ 0.00200	\$ 3,402.00	0.01056	\$17,967.29	\$ (14,564.39)
	108,656,674	0.1	0.997	\$ 0.00200	\$ 21,688.14	0.01056	\$114,397.22	\$ (92,731.08)
	9,878,399	0.1	0.997	\$ 0.00200	\$ 1,989.75	0.01056	\$10,400.29	\$ (8,430.54)
Jul-98	19,936,070	0.1	0.997	\$ 0.00200	\$ 3,975.25	0.01028	\$20,022.91	\$ (16,047.66)
	127,306,655	0.1	0.997	\$ 0.00200	\$ 25,384.95	0.01028	\$127,861.20	\$ (102,476.25)
	11,163,384	0.1	0.997	\$ 0.00200	\$ 2,225.98	0.01028	\$11,212.01	\$ (8,986.03)
Aug-98	22,045,623	0.1	0.997	\$ 0.00200	\$ 4,395.90	0.01028	\$22,141.65	\$ (17,745.75)
	155,759,111	0.1	0.997	\$ 0.00200	\$ 31,058.37	0.01028	\$156,437.60	\$ (125,379.23)
	11,099,766	0.1	0.997	\$ 0.00200	\$ 2,213.29	0.01028	\$11,148.12	\$ (8,934.83)
Sep-98	22,443,065	0.1	0.997	\$ 0.00200	\$ 4,475.15	0.01056	\$23,154.78	\$ (18,679.63)
	168,018,749	0.1	0.997	\$ 0.00200	\$ 33,502.94	0.01056	\$173,346.96	\$ (139,844.02)
	10,302,585	0.1	0.997	\$ 0.00200	\$ 2,054.34	0.01056	\$10,629.30	\$ (8,574.96)
Oct-98	23,077,272	0.1	0.98	\$ 0.00200	\$ 4,523.15	0.0175	\$39,577.52	\$ (35,054.38)
	171,655,628	0.1	0.98	\$ 0.00200	\$ 33,644.50	0.0175	\$294,389.40	\$ (260,744.90)
	10,201,624	0.1	0.98	\$ 0.00200	\$ 1,999.52	0.0175	\$17,495.79	\$ (15,496.27)
Nov-98	210,777,124	0.1	0.98	\$ 0.00200	\$ 41,312.32	0.0175	\$361,482.77	\$ (320,170.45)

# Intermedia Non ISP Payments

	Total MOUs Invoiced	Non ISP Factor	PLU	Correct Local Rate	Non-ISP Local Due	Local Rate Paid	Non-ISP Local \$ Paid	Difference In Amt Due & Amt Pd
Dec-98	154,977,667	0.1	0.98	\$ 0.00200	\$ 30,375.62	0.0175	\$265,786.70	\$ (235,411.08)
	64,064,865	0.1	0.98	\$ 0.00200	\$ 12,556.71	0.0175	\$4,544.48	\$ 8,012.23
Jan-99	267,928,952	0.1	0.978	\$ 0.00200	\$ 52,408.90	0.0175	\$17,779.67	\$ 34,627.23
Feb-99	254,990,416	0.1	0.978	\$ 0.00200	\$ 49,876.13	0.0175	\$2,182,080.48	\$ (2,132,204.35)
Mar-99	308,363,755	0.1	0.978	\$ 0.00200	\$ 60,315.95	0.0175	\$527,764.57	\$ (467,448.62)
Apr-99	333,628,373	0.1	0.972	\$ 0.00200	\$ 64,857.38	0.0175	\$567,501.86	\$ (502,644.51)
				<b>Total Non-ISP Local Due</b>	<b>\$ 1,474,447.46</b>		<b>\$5,980,716.64</b>	<b>\$ (4,506,269.18)</b>

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July 13, 1999

Ms. Nancy B. White  
General Counsel - Florida  
BellSouth Telecommunications, Inc.  
150 South Monroe Street  
Room 400  
Tallahassee, FL 32301

Dear Ms. White:

This letter is sent in response to your letter dated July 2, 1999 to me, which accompanied BellSouth's check in the amount of \$12,723,883.38, payable to Intermedia Communications, Inc. ("the check"). By this letter we inform you that the amount of the check is not adequate to compensate Intermedia for the reciprocal compensation traffic that Intermedia has terminated for BellSouth through April 1999 and all prior periods.

After reviewing the spreadsheets that were submitted with the check, Intermedia is unable to discern how BellSouth computed the amounts due Intermedia. The total amount of the check, however, is well below the total amount of compensation BellSouth owes to Intermedia. In the near future, Intermedia will provide BellSouth with a detailed accounting of the amounts due.

Please be advised that Intermedia expressly reserves its right to take additional action against BellSouth for full payment of Intermedia's claim. The check should in no way be considered by BellSouth to be an accord and satisfaction of any dispute over the amount of reciprocal compensation due to Intermedia from BellSouth. As BellSouth acknowledged in your letter of July 2, 1999, the dispute between BellSouth and Intermedia over reciprocal compensation payments is ongoing, and may not be resolved for some time.

Moreover, if BellSouth continues to compute reciprocal compensation payments due to Intermedia for services provided in May 1999, and going forward, using the same formula that is reflected in the July 2 letter, please be advised that those payments will also fall far short of the amounts that BellSouth is obligated to pay Intermedia under the Interconnection Agreement executed between the two companies. As noted above, in the near future, we will provide you with additional information that demonstrate how to compute the correct amount of compensation due Intermedia, both retroactively, and going forward.

Sincerely,

*Patrick Knight Wiggins*  
Patrick Knight Wiggins